

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

CHOOSE LIFE ILLINOIS, INC.,)	
et al.,)	
)	
Plaintiff,)	
)	
v.)	No. 04 C 4316
)	
JESSE WHITE, Secretary of State,)	Judge Coar
State of Illinois,)	
)	
Defendants.)	

**DEFENDANT'S RESPONSE TO PLAINTIFFS' STATEMENT OF UNDISPUTED
FACTS PURSUANT TO LOCAL RULE 56.1**

The defendant, JESSE WHITE, the Illinois Secretary of State, by his attorney, LISA MADIGAN, Attorney General of Illinois, submits the following response to plaintiffs' motion for summary judgment.

A. The Parties, Jurisdiction and Venue

1. The lead plaintiff, Choose Life Illinois, Inc. ("Choose Life" or "Choose Life Illinois"), is an Illinois not-for-profit corporation, organized for charitable and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code and Section 103.05 of the Illinois Not-for-Profit Corporation Act. Choose Life is in good standing. Choose Life Illinois' purpose is "to promote within the State of Illinois the adoption of children, to increase public awareness about the importance of adoption, and to educate the public concerning the adoption of children." (TAB A hereto). Toward those ends, Choose Life has sought to obtain the approval of a "Choose Life" specialty plate in Illinois by collecting signatures on petitions, urging the Illinois General Assembly to pass legislation approving the plate, and joining in this lawsuit.

RESPONSE: Admit.

2. The 15 individual plaintiffs are Richard and Sue Bergquist, James and Phyllis Finnegan, Daniel and Sandra Gura, Becky MacDougall, Virginia McCaskey, Thomas and Bethany Morrison, Dan Proft, Richard and Jill Stanek, and Joseph and Carol Walsh. Each resides in Illinois and each holds a leadership position in, and is

a member of, Choose Life Illinois. See TAB A, ¶3. All of the individual plaintiffs would purchase one or more sets of the "Choose Life" specialty plates if they were available (TAB A, ¶3). Many of the individual plaintiffs have been public advocates of adoption (*Ibid.*). Many have adopted children of their own or were themselves adopted (*Id.*).

RESPONSE: Admit that the individual plaintiffs are members or leaders or supporters of, Choose Life Illinois. Defendants would dispute that *all* of the plaintiffs have standing to assert they would buy "Choose Life" plates if available. The cited affidavit of Mr. Finnegan does not have a foundation as to how he can speak for all the individuals especially since the amended complaint's allegations do not allege that Mrs. McCaskey or Mr. and Mrs. Walsh own a car or have a driver's license. (See amended complaint, par. 10 and 14).

3. The defendant, Jesse White, is the Secretary of State of the State of Illinois. Among other duties, White has statutory responsibility for issuing vehicle license plates in Illinois and for administering the specialty license plate programs in Illinois (Amended Complaint, ¶15; Answer to Amended Complaint, ¶15, "admits," etc.).

RESPONSE: Admit.

4. This Court has jurisdiction over the parties and also over the subject matter, pursuant to 28 U.S.C. §§1331, 1343(a)(3), and 1343(a)(4). TAB B, Amended Complaint, ¶16, Answer to Amended Complaint, ¶16 ("admits," etc.). Venue is properly laid as the defendant does business in this District pursuant to 28 U.S.C. §1391(b) TAB B, Am. Compl., ¶18, Answer to Amended Complaint, ¶18 ("admits," etc.).

RESPONSE: Admit.

B. Brief History Of License-Plate Regulation In Illinois

5. Since 1907, Illinois has required automobiles to be registered by the Secretary of State's office and to bear a license plate. See The History of Illinois License Plates (presented by Secretary of State White) < available at http://www.sos.state.il.us/special/plate_history/start_history.html > (see, Addendum to Statement of Undisputed Facts, filed herewith, hereinafter "Addendum"). Until 1911, license plates were provided by the vehicle's owner rather than by the State. *Ibid.* Between 1911 and 1978, Illinois issued new plates to motorists annually; in 1979, it began to issue multi-year plates. *Ibid.* Sample images of Illinois license plates for each of the years 1907-2001 can be viewed on the Secretary of State's website. See *ibid.*

RESPONSE: Admit.

6. Beginning in 1954, the slogan "Land of Lincoln" has appeared "on Illinois license plates, with few exceptions." *Ibid.* In 1955, the Illinois General Assembly approved "Land of Lincoln" as the official slogan of the State. *Ibid.*

RESPONSE: Admit.

7. Over time, Illinois has required supplemental information on license plates that would assist in identifying vehicles or their owners. For example, the State began to issue dealer plates in 1912, plates for trucks in 1920, plates for trailers in 1924, municipal plates in 1935, plates for taxis in 1941, bus plates in 1942, school-bus plates in 1967, and plates for recreational vehicles in 1969. *Ibid.* Certain state officials, including members of the General Assembly, also began to be issued designated license plates in 1940-41. *Ibid.*

RESPONSE: Admit.

8. As early as 1948, Illinois began to allow private individuals with special qualities or affiliations to express that fact on their license plates. In that year, the State allowed disabled veterans of the armed services to obtain license plates bearing the words, "DISABLED VETERAN." *Ibid.* In 1956, Illinois issued plates for amateur radio (ham radio) operators bearing the words "AMATEUR RADIO." *Ibid.* In 1967, the State issued special inaugural license plates to any Illinois resident who officially participated in a presidential inauguration (the plates were usable only from January 15 to February 15 in the year in which the inauguration occurred). *Ibid.* In 1975, Illinois issued to heavyweight boxing

champion Mohammad Ali special license plates "with stick-figure boxers in a ring instead of a number." *Ibid.*

RESPONSE: Admit.

9. In 1980, the State more generally introduced vanity and personalized license plates. *Ibid.* Under the new program, "personalized" plates "have *both* letters and numbers," whereas "vanity" plates have either "all letters" or all numbers ("one, two or three numbers"). *Ibid.* (emphasis added). In the first year alone, the Secretary of State's office received 24,000 requests for vanity plates. *Ibid.*

RESPONSE: Admit.

10. In 1983, the Secretary of State was "given statutory authority to issue license plates for special events." *Ibid.* "Before 1983, specially designated plates were available only for ceremonial events such as parades and for members of the Presidential Inaugural Committee." *Ibid.* Beginning in 1983, "organizations that sponsor special events can order special plates for sale to the public to promote those events." *Ibid.*

RESPONSE: Admit.

11. In 1988, Illinois began to offer specially designed license plates to recipients of the Purple Heart. *Ibid.*

RESPONSE: Admit.

12. In 1990, the General Assembly enacted P.A. 84-1207, §1 (eff. Aug. 29, 1990) (currently codified at 625 ILCS 5/3-600), which sets forth certain requirements for the issuance of specialty license plates but exempts "special license plates categories in existence" prior to the effective date of that Act. By its terms, P.A. 84-1207 does not require enabling legislation before a new category of specialty license plate may be issued.

RESPONSE: This is a statement of law, not the assertion of a fact.

Defendants deny the implication that the Secretary of State can issue any speciality plate he chooses on his own authority, which is contrary to the

Secretary's interpretation of the law and the many statutes passed by the legislature specifically authorizing each speciality plate category.

C. Illinois's Current Statutory Scheme Governing The Issuance Of License Plates

13. With certain exceptions, every motor vehicle registered in Illinois must bear a license plate (sometimes referred to as a "registration plate") issued by the Illinois Secretary of State's Vehicle Services Department ("VSD") under the oversight and direction of the defendant, Jesse White. See 625 ILSC 5/3-401, -402, -412, -413; 625 ILSC 5/1-171; see also 2 Ill. Admin. Code § 550.210(y) (stating that VSD is charged with the responsibility for "issu[ing] all license plates***.").

RESPONSE: Admit.

14. When vehicle owners request license plates from the VSD today, they may choose a standard plate or a more expensive "vanity," "personalized," or "specialty" plate. Specialty plates, of which there are approximately 60 designs, bear a medley of various political and/or special-interest messages which the vehicle owner may choose to purchase and display on his or her vehicle. Examples of such messages on specialty plates include "Be an Organ Donor," "Master Mason," "I am Pet Friendly," and "D.A.R.E." See 625 ILSC 5/3-635, -637, -646, -653. The proceeds from specialty plates typically inure in large part to the benefit of the various interest groups that sponsor them. See, e.g., 625 ILSC 5/3-646(c). The VSD advertises the availability of specialty plates through a variety of means, including, *inter alia*, through its official website and through brochures. See TAB C.

RESPONSE: Admit there are vanity, personalized, and specialty plates. Deny that there are 60 speciality designs in production and available for purchase. See Defendant's Ex. E, Dannenberger deposition, p. 34 and Exhibit 2 to that deposition, which shows the current numbers of available speciality plate designs. Admit the remaining statements in paragraph 14.

15. Illinois law vests in the Secretary of State the authority to "observ[e], administer [], and enforce" the provisions of the motor vehicle code (including those

governing specialty license plates) as well as to "make, amend, and rescind such rules and regulations as may be necessary in the public interest to carry out the provisions" of the motor vehicle code. 625 ILSC 5/2-104. The Secretary's rule making authority extends to "rules and regulations governing procedures for the filing of applications and the issuance of licenses or registrations thereunder." *Ibid*. The Secretary of State is also authorized to refuse any application "lawfully made to the Secretary of State" (including an "application" for a specialty license plate) if he is "not satisfied of the genuineness, regularity or legality thereof or the truth of any statement contained therein, or for any other reason, when authorized by law." 625 ILSC 5/2-110; 625 ILSC 5/3-600(a).

RESPONSE: Admit that paragraph contains accurate partial quotations from the Motor Vehicle Code.

16. The statutory requirements specifically applicable to the issuance of special plates in Illinois are set forth in 625 ILCS 5/3-600. Under that provision, the Secretary of State is barred from issuing a series of special plates "unless applications, as prescribed by the Secretary, have been received for 10,000 plates of that series; except that the Secretary of State may prescribe some other required number of applications if that number is sufficient to pay for the total cost of designing, manufacturing, and issuing the special license plate." 625 ILCS 5/3-600(a). This provision also requires the Secretary of State, "upon issuing a new series of special license plates" to "notify all law enforcement officials of the design, color and other special features" of the plates. 625 ILCS 5/3-600(b). See also 625 ILCS 5/3-601(g) (requiring specialty plates to be displayed on vehicles in a manner provided under 625 ILCS 5/3-413); *id.* 5/3-601(j) (stating that the Secretary "may limit the number of special plates issued to any applicant").

RESPONSE: Admit that the paragraph contains accurate partial quotations and paraphrases from the Motor Vehicle Code.

17. In other provisions of the motor vehicle code, the General Assembly has imposed substantive limitations and requirements on the form of all licenses plates. With certain exceptions, for example, license plates must display the name of the State, the registration number of the vehicle, the year number for which it is issued, and the phrase "Land of Lincoln." 625 ILCS 5/3-412(b). Moreover, "[e]ach registration plate and the required letters and numbers thereon, except for the year number for which issued, shall be of sufficient size to be plainly readable from a

distance of 100 feet during daylight." 625 ILCS 5/3-412(c).

RESPONSE: Admit that the paragraph contains accurate paraphrases and partial quotations from the Motor Vehicle Code.

18. With respect to vanity and personalized licensed plates, the General Assembly has imposed limitations on the Secretary's authority to issue plates. See 625 ILCS 5/3-405.1, -405.2. For example, "No vanity or personalized license plates shall be approved * * * that contain any characters, symbols other than the international accessibility symbol for vehicles operated by or for persons with disabilities, foreign words, or letters of punctuation." 625 ILCS 5/3-405.1(e). In addition, Illinois law requires the Secretary "to refuse any license plates bearing a combination of letters or numbers, or both, which creates a potential duplication or, in the opinion of the Secretary, (1) would substantially interfere with plate identification for law enforcement purposes, (2) is misleading, or (3) creates a connotation that is offensive to good taste and decency." 625 ILCS 5/3-405.2. The General Assembly, however, has not placed similar limitations on the Secretary's authority to issue specialty plates.

RESPONSE: Admit that the paragraph contains accurate paraphrases and partial quotations from the Motor Vehicle Code. Deny the last sentence. The legislature gives the Secretary less discretion, not more, in the issuance and design of speciality license plates. The legislature authorizes not just the specific subject matter of the plate but in some cases its design as well. See, e.g., 625 ILCS 5/3-643; 625 ILCS 5/3-646 (specifying logo and wording on plate).

D. Secretary White's Written Policy Concerning Specialty Plates

19. Secretary White has issued what he refers to as a "New Plate Categories Document," which is also captioned as a "Fact Sheet" explaining his policy and practice with respect to the issuance of new categories or types of specialty license plates. See Amended Complaint, ¶20 and Exhibit B thereto; Answer to Amended Complaint, ¶20 ("Defendant admits that new special plates

must be approved by the passage of legislation. Defendant admits that he has also issued a 'New Plate Categories' document specifying that the General Assembly must approve specialty plates and that, once approved by law, if 850 people have requested a new plate, the new plate will be produced"). TAB B & TAB D. Pursuant to the authority specifically granted by 625 ILCS 5/3-600(a), the Secretary has reduced the requisite number of applications for a new plate from the statutory target of 10,000 to an indefinite number "approach[ing] the 850 level" that must be received before work can begin on designing the plate. TAB D.

RESPONSE: Admit. The "New Plate Categories Fact Sheet" states "As the number of requests approaches the 850 level (somewhere between 750 and 850 depending on the amount of time elapsed from the inception of the legislation to the current date) . . ." (See plaintiffs' Ex. D).

20. Secretary White's written policy also imposes a limitation on his own broad authority under the motor vehicle code to approve new specialty plates. According to his written policy, before any "new plate category" may be approved, "[l]egislation must be introduced (by a legislator, either in the Senate or the House), passed by both chambers, and signed into law by the Governor. The Secretary can not arbitrarily begin issuing a new plate category." Amended Complaint, ¶20, Exhibit B. Answer to Amended Complaint, ¶20. TAB B & TAB D. Secretary White's requirement of prior approval by the Illinois General Assembly and Governor - a requirement which was not included by the General Assembly itself in 625 ILCS 5/3-600, which sets forth the requirements for specialty plates - fixes no substantive criteria according to which access to a new specialty license plate will be determined. TAB D.

RESPONSE: Deny the legal argument and characterization (which lacks any citation) that the Secretary's policy imposes a limitation "on his own broad authority under the motor vehicle code to approve new speciality plates." Admit the second and third sentences contain an accurate partial quotation of the Secretary's Fact Sheet. Deny the legal argument and characterization that there is no "substantive criteria" for

approval of a speciality plate. The legislature approves speciality plates on an individual basis, not on the basis of criteria delegated to the Secretary of State.

21. The balance of Secretary White's administrative policy provides guidance about how the approval process works once the necessary precondition of legislation authorizing the new specialty plate has been satisfied. The policy states:

"2. Once the plate is authorized by law the Vehicle Services Division begins accepting commitment forms containing names and addresses of people who will be applying for the plate when and if it becomes available. No money or applications are accepted at this time, simply names, addresses, daytime telephone numbers and current license plate numbers. Please note: Any promotional materials are the sole responsibility of the sponsoring organization.

3. As the number of requests approaches the 850 level (somewhere between 750 and 850 depending on the amount of time elapsed from the inception of the legislation to the current date) our Communications Department works with someone representing the special interest group on a design of the plate.

4. A sample plate, designed as agreed to by the group and the Secretary of State, with the approval of law enforcement, is produced and signed off by all the aforementioned parties.

5. If the 850 minimum is now a reality an initial production order is placed.

6. Notification and applications are sent to all those that had submitted commitment forms requesting the plate when it became available.

7. Plates are issued as the applications and money are received.

8. Additional fees are deposited in the special fund created by the legislation.

9. Once annually the funds, subject to appropriation by the legislature, are forwarded to the organization by the Comptroller."

Amended Complaint, ¶20, Exhibit B. Answer to Amended Complaint, ¶20. TAB B. The policy is contained in TAB D.

RESPONSE: **Admit. (It should be noted that there are two versions of the Fact Sheet in the record, with one version having this additional sentence at the end of paragraph 2: “Please note: Any promotional materials are the sole responsibility of the sponsoring organization.”)**

E. Secretary White's Implementation Of His Policy Concerning Specialty Plates

22. Consistent with the Secretary's policy, when the VSD receives inquiries from the public about new specialty license plates, it advises the inquirer that legislative approval of the plate is a necessary prerequisite to obtaining any new plate. Dannenberger Dep. 10-11 (TAB E). The VSD does not impose any other precondition on approval, but does follow any restrictions or directions concerning an approved specialty plate that are included in the legislation approving the plate. *Id.* at 11.

RESPONSE: **Admit.**

23. There are no standards developed or imposed by the Secretary to guide the General Assembly's decision, pursuant to the Secretary's policy, on whether to approve a new specialty license plate. *Id.* at 12. The VSD is aware of no standards that the General Assembly itself has developed or follows in making the approval decision required under the Secretary's administrative policy. *Id.* at 12, 14.

RESPONSE: **Admit.**

24. In the past, the VSD has not had any communications or consultations with members of the General Assembly concerning the appropriateness of particular specialty plates, including the proposed "Choose Life" plate. *Id.* at 11, 16.

RESPONSE: **Admit.**

25. At the time the General Assembly passes legislation authorizing a new specialty plate, the actual design of the plate has not yet been determined. *Id.* at 20.

RESPONSE: Admit in part and deny in part. In some cases the legislature leaves the design of the plate wholly to the Secretary's discretion, see, e.g., 625 ILCS 5/3-627 (environmental plate), in other cases the legislature will specify certain words or designs that must appear on the plate, and the Secretary must incorporate those requirements into the plate design. See e.g., 625 ILCS 5/3-646 (Organ Donor plate must incorporate reference to Chicago Bears and Walter Payton, and include phrase "Be An Organ Donor.")

26. The Secretary's decision to reduce the minimum number of plates ordered to 850 before plates will be manufactured is based on the fact that plates are made from rolls of reflective sheeting, each of which can produce approximately 1600 plates. *Id.* at 22. Since each vehicle requires two plates (front and back), the requirement of 850 commitments ensures that a single roll of sheeting will be used up. *Ibid.*

RESPONSE: Admit.

27. As noted above, the Secretary's written policy states that "any promotional materials" relating to a specialty license plate "are the sole responsibility of the sponsoring organization." Amended Complaint, Exhibit B; TAB B; see also Dannenberger Dep. 24, TAB E). Although the Secretary does advertise individual plate categories on his website and through brochures, he does not engage in promotion of specialty plates. Dannenberger Dep. 24-25, TAB E). Promotion is entirely up to the sponsoring organization. *Ibid.*

RESPONSE: Admit in part and deny in part. As noted in response 25 and Dannenberger deposition, p. 27, in some cases the legislature does specify certain design requirements.

28. The Secretary of State's office role in "work[ing] with someone representing the special interest group on a design of the plate" (TAB E) consists of a graphic artist from the Communications Department (which is separate from the VSD) consulting with the sponsoring organization on the design. *Id.* at 27. There are no guidelines or standards that channel the graphic artist's discretion in this process, but the artist - and the VSD - do seek to ensure that (for law enforcement purposes) any design used is both visible and easy to read. *Ibid.* The requirement of "approval of law enforcement" that is mentioned in the Secretary's administrative policy also relates to issues of visibility. *Id.* at 29-30. At least since the summer of 1999, the VSD has never rejected a graphic design for a specialty plate; any objections as to colors or visibility have always been worked out informally with the sponsoring group. See Dannenberger Dep. 43 (providing testimony on June 25, 2005 of the Secretary of State's consistent practice since summer of 1999) (TAB E).

RESPONSE: Admit. If there has been an objection to the graphic design, those objections have been worked out. Dannenberger dep., p. 43.

F. The Legislation Relating To Particular Specialty License Plates

29. There are currently some 60 specialty license plates that exist in Illinois, at least 27 of which have been privately "sponsored" by special-interest or advocacy groups (numbers 1 through 27):

- (1) Korean War Veteran License Plates, 625 ILCS 5/3-626;
- (2) Environmental License Plates, 625 ILCS 5/3-627;
- (3) Collegiate License Plates, 625 ILCS 5/3-629;
- (4) Prevent Violence License Plates, 625 ILCS 5/3-630;
- (5) Sportsmen Series License Plates, 625 ILCS 5/3-631;
- (6) Wildlife Prairie Park License Plates, 625 ILCS 5/3-632;
- (7) Illinois Firefighters' License Plates, 625 ILCS 5/3-634;
- (8) Master Mason Plates, 625 ILCS 5/3-635;
- (9) Knights of Columbus Plates, 625 ILCS 5/3-636;
- (10) D.A.R.E. License Plates, 625 ILCS 5/3-637;
- (11) Illinois and Michigan Canal License Plates, 625 ILCS 5/3-640;
- (12) Mammogram License Plates, 625 ILCS 5/3-643;
- (13) Police Memorial Committee License Plates, 625 ILCS 5/3-644;
- (14) Organ Donor Awareness License Plates, 625 ILCS 5/3-646;
- (15) Education License Plates, 625 ILCS 5/3-648;
- (16) Hospice License Plates, 625 ILCS 5/3-648;
- (17) U.S. Marine Corps License Plates, 625 ILCS 5/3-651;
- (18) Chicago and Northeastern Illinois District of Carpenters Plates, 625

- ILCS 5/3-652;
- (19) Pet Friendly License Plates, 625 ILCS 5/3-653;
 - (20) Lewis and Clark Bicentennial License Plates, 625 ILCS 5/3-653;
 - (21) September 11th "America Remembers" License Plates, 625 ILCS 5/3-653;
 - (22) Illinois Route 66 License Plates, 625 ILCS 5/3-653;
 - (23) Illinois Public Broadcasting System Stations License Plates, 625 ILCS 5/3-654;
 - (24) Pan Hellenic License Plates, 625 ILCS 5/3-654;
 - (25) Park District Youth Program License Plates, 625 ILCS 5/3-654;
 - (26) Professional Sports Teams License Plates, 625 ILCS 5/3-654;
 - (27) Stop Neuroblastoma License Plates, 625 ILCS 5/3-654;
 - (28) Members of the General Assembly, 625 ILCS 5/3-606;
 - (29) Retired Members of the General Assembly, 625 ILCS 5/3-606.1;
 - (30) Amateur Radio Operators, 625 ILCS 5/3-607;
 - (31) Disabled Veterans, 625 ILCS 5/3-609;
 - (32) Congressional Medal of Honor Recipients, 625 ILCS 5/3-609.1;
 - (33) Members of Congress, 625 ILCS 5/3-610;
 - (34) Retired Members of the Illinois Congressional Delegation, 625 ILCS 5/3-610.1;
 - (35) Repossessors, 625 ILCS 5/3-612;
 - (36) Special Inaugural License Plates, 625 ILCS 5/3-613;
 - (37) Honorary Consular License Plates, 625 ILCS 5/3-615;
 - (38) License Plates for Disabled Individuals, 625 ILCS 5/3-616;
 - (39) Drivers Education, 625 ILCS 5/3-617;
 - (40) Charitable Vehicle, 625 ILCS 5/3-618;
 - (41) Ex-Prisoners of War, 625 ILCS 5/3-620;
 - (42) Illinois National Guard, 625 ILCS 5/3-621;
 - (43) Members of Armed Forces Reserves, 625 ILCS 5/3-622
 - (44) Purple Heart, 625 ILCS 5/3-623;
 - (45) Retired Armed Forces, 625 ILCS 5/3-624;
 - (46) Pearl Harbor Survivor, 625 ILCS 5/3-625;
 - (47) Bronze Star License Plates, 625 ILCS 5/3-628;
 - (48) Universal Charitable Organization License Plates, 625 ILCS 5/3-633;
 - (49) Universal U.S. Veteran License Plates, 625 ILCS 5/3-638;
 - (50) Special Registration Plates for a President of a Village or Incorporated Town or Mayor, 625 ILCS 5/3-639;
 - (51) Deceased Police Officer or Firefighter License Plates, 625 ILCS 5/3-641;
 - (52) Silver Star License Plates, 625 ILCS 5/3-642;
 - (53) Vietnam Veteran License Plates, 625 ILCS 5/3-645;
 - (54) World War II Veteran License Plates, 625 ILCS 5/3-647;
 - (55) West Point Bicentennial License Plates, 625 ILCS 5/3-649;

- (56) Army Combat Veteran License Plates, 625 ILCS 5/3-650;
- (57) Antique Vehicle Plates, 625 ILCS 5/3-804;
- (58) Custom Vehicle Plates, 625 ILCS 5/3-804.1;
- (59) Street Rod Plates, 625 ILCS 5/3-804.2;
- (60) Gold Star Plates, 625 ILCS 5/3-806.4.

RESPONSE: Admit in part, denied in part. The list of plates authorized by the legislature does not mean that “some 60 speciality license places . . . exist in Illinois,” because not all of them are in production. Dannenberger dep., p. 8, p. 34 (Legislature may pass law authorizing creation of plate, but the plate is not produced without about 850 people expressing interest).

30. Many of the foregoing, plate-specific statutes provide that the design and color of the specialty plates are matters within the Secretary's discretion. See, *e.g.*, 625 ILSC 5/3-637(b) ("The design and color of the [D.A.R.E.] plates shall be wholly within the discretion of the Secretary of State."); 625 ILCS 5/3-627 (same for Environmental Plates). Some of these statutes except the specialty plate from the general requirement to bear the designation "Land of Lincoln," but others do not. Compare 625 ILSC 5/3-633 (excepting Universal Charitable Organization Plates from that requirement), and 625 ILSC 5/3-654 (same for Illinois Public Broadcasting System Plates) with 625 ILSC 5/3-636 (including no similar exception for Knights of Columbus Plates), and 625 ILSC 5/3-654 (same for Stop Neuroblastoma Plates). Several of these statutes require the inclusion of a specific message on the specialty plate. See, *e.g.*, 625 ILSC 5/3-653 (Pet Friendly Plates) ("I am pet friendly."), 625 ILSC 5/3-654 (Stop Neuroblastoma-Plates) ("Stop Neuroblastoma" and "Stop Cancer").

RESPONSE: Admit.

31. Most of the statutes relating to plates sponsored by special-interest or advocacy groups specify the fees for the original issuance and renewal of the plates, as well as where those funds will be deposited and how they will be distributed. See, *e.g.*, 625 ILSC 5/3-627(c) (Environmental Plates); 625 ILCS 5/3-630(c) (Prevent Violence Plates); 625 ILSC 5/3-654 (Stop Neuroblastoma Plates). The distribution

scheme usually calls for the bulk of the collected funds to be distributed to the relevant charitable or non-profit organization and a much smaller portion to be distributed to the State of Illinois to cover or help defray administrative processing costs. See, e.g., 625 ILCS 5/3-636(c), (d) (Knights of Columbus Plates); see also Dannenberger Dep. 13-14 (TAB E).

RESPONSE: Admit in part. As indicated by the statutes, there is an extra charge, and the “bulk” of that *extra* charge goes to the charity. The base license plate fee (the same as for generic plates) and base annual renewal fee does not go to the charity. See, e.g., 625 ILCS 5/3-640.

G. The VSD's Data Concerning The Operation Of The Specialty License Program

32. The VSD maintains data concerning the operation of the specialty plate program. Dannenberger Dep. 7-9 & dep. exhibit 2 (TAB E). These data show that the number of people with active registrations in 2005 who had specialty plates included the following: Violence Prevention Plates, 24,363; Environmental Plates, 53,400; Sportsmen Plates, 10,287; Master Mason Plates, 1,989; and Pet Friendly Plates, 1,732. *Ibid*, dep. exhibit 2 .

RESPONSE: Admit. (As Mr. Dannenberger testified, p. 7, it is more accurate to look at the 2005 statistics than 2006, which are not complete for the year.)

33. The VSD's data also show the total amount collected for each specialty plate through April 2005. Dannenberger Dep. 8 (dep. exhibit 2)(TAB E). These amounts range from more than \$21 million and \$9 million, respectively, for the Environmental Plates and the Violence Prevention Plates, to \$409,650 for the Organ Donor Plates and \$132,000 for the Pet Friendly Plate, to \$28,400 for the Education Plates and \$4,385 for the West Point Bicentennial Plates. *Ibid*. dep. exhibit 2. TAB E).

RESPONSE: Admit. (As the exhibit indicates, the sales figures are not annual totals, but from the inception of the plate.)

34. The VSD also maintains a weekly status report of the number of requests it has received for specialty plates that have been approved by the General Assembly but not yet gone into production. Dannenberger Dep. 8 (dep. exhibit 2); TAB E. That document shows, for example, that as of June 10, 2005, there had been only 57 requests for the Stop Neuroblastoma Plate, only 28 requests for the Knights of Columbus Plate, and only two requests for the Lewis and Clark Bicentennial Plate. *Ibid.*, dep. exhibit 2.

RESPONSE: Admit.

H. Secretary's White's Treatment Of License-Plate Speech In Other Official Publications

35. The Secretary has published other administrative materials and brochures that shed light on his treatment of license-plate speech or acknowledge the expressive function of such speech by the vehicle's driver. In the brochure for the Pet Friendly Plates, for example, Secretary White states: "My office allows pet lovers the unique opportunity to support animal population control in Illinois by purchasing a set of Pet Friendly Plates. * * * Pet Friendly Plates provide a great way to show your love of animals and even say something special about your pet with vanity or personalized plates." See TAB F (<available at http://www.sos.state.il.us/publications/pdf_publications/vsd6481.pdf>).

RESPONSE: Admit that this paragraph accurately quotes from the Secretary of State's brochure about Pet Friendly plates. Defendant would object to the characterization or argument in this paragraph that the materials "acknowledge the expressive function of such speech." This is not a fact, with citation to the record, as much as argument and thus inappropriate for the 56.1 statement of facts.

36. In his "Procedural Guidelines for Special Event License Plates," Secretary White makes clear that special-event plates "are a unique promotional device made available to civic groups and other by the Office of the Secretary of State." See TAB G. "To qualify," the Secretary explains, "the event should be open

to the public and be an activity that promotes the interests of Illinois citizens." *Ibid* "The organization requesting the Special Event Plates," moreover, "is responsible for * * * [d]esigning the plate and supplying the artwork." *Ibid*. Elsewhere, however, the Guidelines state that Secretary and the VSD shall make the "final determination of whether a plate design is suitable for display." *Ibid*. The Secretary's Guidelines on Special Event Plates set forth a variety of viewpoint-neutral "technical requirements" for the artwork on such plates. *Ibid*.

RESPONSE: Admit in part. "Special Event" plates are not the same as speciality license plates, and not relevant to this case, for reasons explained in defendant's memorandum of law. Admit that this paragraph contains accurate partial quotations of the document, "Procedural Guidelines for Special Event License Plates."

37. The Secretary has provided additional guidance concerning vanity and personalized plates and has created an application form for such plates. See TAB C (guidance)([available at http://www.sos.state.il.us/departments/vehicles/license_plate_guide/personalized.html](http://www.sos.state.il.us/departments/vehicles/license_plate_guide/personalized.html)) (application form)([available at http://www.sos.state.il.us/publications/pdf_publications/vsd41413.pdf](http://www.sos.state.il.us/publications/pdf_publications/vsd41413.pdf)). The guidance document and the form both include the following statement of Secretary White:

"As Secretary of State, I am proud to offer you the opportunity to express yourself through vanity or personalized license plates. These plates allow you to be creative, say something special and help support an important cause.

The sale of these plates helps support highway maintenance as well as preserve our state parks, raise money for violence prevention and promote organ donor awareness.

I encourage you to join the thousands of Illinois drivers who have expressed their individuality by purchasing vanity and personalized license plates."

RESPONSE: Admit.

38. Both the guidance document and the application form for personalized

and vanity license plates state that "[t]he Secretary of State's office is authorized to recall a plate that is determined to be obscene or offensive." *Ibid.* Both also make clear that vanity and personalized plates may not "[i]ntermix letters and number," "[u]se a space between numbers," "[u]se lower-case letters," "[u]se characters, symbols, foreign words or symbols of punctuation, such as dashes or periods," or "[s]elect obscene or offensive combinations." *Ibid.*

RESPONSE: Admit.

I. Plaintiffs' Unsuccessful Efforts To Obtain A "Choose Life" Specialty License Plate

39. During the 2001-2002 legislative session, the Illinois General Assembly enacted, and the Governor signed into law, legislation authorizing specialty license plates to raise money and awareness for social causes including, inter alia, education, pet overpopulation, park district youth programs, neuroblastoma research and prevention, and Pan-Hellenic charities. TAB A. Such legislation took between 5 and 12 months from the time of introduction in either body of the Illinois General Assembly to enactment and final approval by the Governor. *Ibid.*

RESPONSE: Admit.

40. In a good faith attempt to follow the specialty license plate scheme administered by Secretary White, Choose Life Illinois requested during the 2001-02 legislative session that then-Illinois State Senator Patrick O'Malley and Illinois State Representative Dan Brady sponsor legislation for the purpose of making available to vehicle owners specialty license plates bearing the phrase, "Choose Life." These lawmakers agreed and introduced several "Choose Life" specialty license plate bills in the 2001-2002 legislative session, including SB 2426 and HB 3374. These bills were never enacted into law. *Ibid.*

RESPONSE: Admit. To date, the Illinois General Assembly has not passed a law authorizing a "Choose Life" plate.

41. In the 2003-2004 legislative session, Choose Life Illinois again requested sponsorship of legislation that would make available to vehicle owners specialty license plates bearing the phrase, "Choose Life." Illinois State Senator Kirk Dillard and Illinois State Representative Randall Hultgren agreed to sponsor

such legislation and introduced several "Choose Life" specialty license plate bills in the 2003-2004 legislative session, including SB 1502 and HB 0010. But during the session prior to filing of this lawsuit, the General Assembly again took no further action and thus failed to approve the new plate. *Ibid.*

RESPONSE: Admit. To date, the Illinois General Assembly has not passed a law authorizing a "Choose Life" plate.

42. Only if these bills had been enacted by the Illinois General Assembly would Secretary White have approved the "Choose Life" specialty license plates; only then could the proceeds from the DVS's sale of the "Choose Life" license plates be distributed (in part) to non-governmental, not-for-profit agencies throughout Illinois that provide counseling and other services to meet the needs of pregnant women who are committed to placing their newborn children for adoption.

RESPONSE: Admit. Without legislation, there can be no "Choose Life" plate.

43. Plaintiff Choose Life Illinois as a non-profit organization manifestly meets the requirements for distribution of funds and would have received funds from the sale of "Choose Life" specialty plates, if they had been approved. At the time of the bills' introduction, Choose Life Illinois had already received signed petitions requesting "Choose Life" plates from over 25,000 Illinois. Yet, legislative efforts were met with total frustration, amidst expressions of political disapproval of plaintiffs' espousal of their "Choose Life" slogan as a means of promoting adoption in Illinois - on the part of avowedly "pro-choice" legislative leadership. *See, e.g.,* Declaration of Dan Proft submitted herewith.

RESPONSE: Admit that there may have been thousands of petitions, and admit no legislation was passed. Whether "Choose Life Illinois as a non-profit organization manifestly meets the requirements for distribution of funds and would have received funds from the sale of 'Choose Life' speciality plates, if they had been approved" is a speculative assertion not supported by the declaration; would be dependent on the

legislation, if passed; is not material to the First Amendment issue; and is therefore denied, as not supported in the record.

Respectfully submitted,

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